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CALIFORNIA STATE ALLOCATION BOARD
PUBLIC MEETING

STATE CAPITOL
ROOM 112
SACRAMENTO, CALIFORNIA 95814

DATE: WEDNESDAY, DECEMBER 8, 2004
TIME: 2:11 P.M.

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APPEARANCES

MEMBERS OF THE BOARD PRESENT:

JEANNIE OROPEZA, Program Budget Manager, Education,
Department of Finance, Designated Alternate for Michael C.
Genest, Interim Director, Department of Finance

ROB COOK, Deputy Director, Department of General Services

DAVE SICKLER, Southern California Regional Director, State
Building and Construction Trades Council of California

DR. WILLIAM ELLERBEE, JR., Deputy Superintendent,
School & District Operations Branch, Department of
Education

SENATOR BOB MARGETT

ASSEMBLY MEMBER LYNN DAUCHER

ASSEMBLY MEMBER JACKIE GOLDBERG

REPRESENTATIVES OF THE STATE ALLOCATION BOARD PRESENT:

JACQUELINE WILSON, Deputy Executive Officer

BRUCE B. HANCOCK, Assistant Executive Officer

REPRESENTATIVE OF THE DEPARTMENT OF GENERAL SERVICES,
OFFICE OF LEGAL SERVICES PRESENT:

GARRY NESS, Acting Chief Counsel

P R O C E E D I N G S

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CHAIRPERSON OROPEZA: I'd like to call the meeting to order. Can you please call the roll.

MS. JONES: Senator Margett.

SENATOR MARGETT: Here.

MS. JONES: Senator Torlakson.

Assembly Member Daucher.

ASSEMBLY MEMBER DAUCHER: Here.

MS. JONES: Assembly Member Goldberg.

ASSEMBLY MEMBER GOLDBERG: Here.

MS. JONES: Rob Cook.

MR. COOK: Here.

MS. JONES: William Ellerbee.

DR. ELLERBEE: Here.

MS. JONES: David Sickler.

MR. SICKLER: Here.

MS. JONES: Jeannie Oropeza.

CHAIRPERSON OROPEZA: Here.

MS. JONES: Thank you.

CHAIRPERSON OROPEZA: We've been asked to take an item out of order, so we are going to do that. It's the piggyback issue, and I understand -- if you can present the issue, and then I understand we have some people that want to make some comments on that. So after we make the

1 presentation and if members have questions, then we'd ask the
2 members of the public to come up and make their statements.

3 MR. HANCOCK: Thank you, Madam Chair. I'll make
4 the presentation very brief. It's on Tab 13 which is
5 page 234 of the agenda and is a report to the Allocation
6 Board in response to a request of an Allocation Board member
7 to look into issues related to factory-built modular
8 components used to construct school facilities.

9 There was some concern expressed or the staff was
10 asked to look into issues regarding the piggyback contracting
11 processes commonly used to acquire those types of facilities
12 or components and to report also on the quality issue
13 regarding these factory-built components.

14 Staff's report then is on page 234 and I'll
15 summarize very briefly. Breaking the issue down into the two
16 parts then, the first was a discussion of so-called
17 piggybacking contracting.

18 This is a process allowed in law in a Public
19 Contracts Code section which exempts school districts from
20 competitively bidding projects under some circumstances, one
21 being that the public entities are acquiring so-called
22 personal property by participating in an existing contract of
23 another public entity, in other words, piggybacking onto an
24 already existing contract.

25 The term personal property has been interpreted by

1 courts in past years to include portable classroom buildings.
2 To my knowledge, it is -- there is no similar ruling on
3 components of classrooms or modular components, but the same
4 rules are being applied by districts and by manufacturers.

5 As I mentioned, this is a very common practice for
6 the purchase of relocatable classrooms. It really is a very
7 significant delivery method.

8 We have looked into the issue that surrounded
9 these manufactured components but also just piggybacking in
10 general without focusing in on any particular type of
11 piggybacking contract, and we find that the piggyback
12 statutes, in the opinion of legal counsel and of staff, would
13 not apply to public works projects, that they apply only to
14 the purchase of personal property.

15 And in the case where districts are using
16 piggyback contracts to construct complete school facilities,
17 we advise in our summary that those districts may be subject
18 to challenge as a violation of competitive bidding
19 requirements in the Contract Code.

20 The other issue that we were asked to look at was
21 the quality issue. We redefined it a little bit in that
22 quality is a very, very subjective thing, but one thing that
23 isn't subjective is that all school facilities are subject to
24 inspection by certified inspectors certified by the Division
25 of the State Architect.

1 We confirmed with the State Architect's office
2 that in fact such inspectors do review and inspect the work
3 both in the factory where the modular components are being
4 constructed and on site where they are being assembled.

5 So while we do not address the issue of quality,
6 we can tell you -- and representatives of the State
7 Architect's office are here to answer questions if you have
8 them -- that in fact these components are subject to field
9 requirements and therefore continuous inspection just as any
10 other school facility would be.

11 And I will leave it at that for questions or
12 presentations.

13 CHAIRPERSON OROPEZA: I'm curious. Do we know how
14 many districts are actually using this method to actually
15 build --

16 MR. HANCOCK: Well, it's -- you have to split it
17 apart just a little bit. The use of piggybacking to acquire
18 portable classrooms is probably so widespread that it would
19 probably be easier to list the districts that do not use it
20 as a delivery method.

21 However, the other -- the use of this method to
22 purchase modular components is a little bit different -- is a
23 little newer, and we cannot really identify, but we do know
24 of specifically -- I believe it was ten projects that we have
25 specific knowledge that were funded under this program and

1 that were delivered in that manner.

2 There may well be more, but as you can see, it's
3 not nearly as large a universe.

4 CHAIRPERSON OROPEZA: If we don't have questions
5 from any of the members, if we can have the -- oh, I'm sorry.
6 Senator Margett.

7 SENATOR MARGETT: If you don't mind. Just for my
8 own information, how many of these modular manufacturers do
9 we have in the State of California, number one? Number two,
10 do we import any of these modular buildings outside the
11 confines of the State of California?

12 And when you say, Mr. Hancock, quality -- in other
13 words, if we're using two-by-four studs or metal studs and
14 we've got bracing and we've got electrical checked and we've
15 got the proper insulation and the double paneled windows in
16 this thing, when you say quality, what does that mean? The
17 color of the walls? Where do we go on quality?

18 Is that what you said, the quality of the
19 building?

20 MR. HANCOCK: When -- I believe I'm right in
21 paraphrasing that when the question was presented to us, it
22 had a quality component to it, but we went ahead and
23 redefined the question because, as I mentioned, quality --
24 and I think as you are trying to point out -- that quality is
25 a subjective thing and that there is nothing in the DSA

1 inspection processes that talks about quality in the sense of
2 that the finish of the wallboard or the paint job or the
3 sanding on the shelves or whatever has been thoroughly and
4 professionally done.

5 DSA inspectors -- and there are people here more
6 qualified to talk to this than I -- but they are looking for
7 compliance with the Field Act, with the plans and
8 specifications, with Title 24, in other words, that
9 structural requirements have been met, that the plans and
10 specifications as approved by the State Architect's office
11 are being rigorously followed.

12 But that is a different issue in our minds than
13 the quality of a piece of work. So to some degree, we tried
14 to stay away from the quality issue and focus simply on the
15 inspection issue.

16 We leave the quality to the architects and the
17 owners to judge.

18 SENATOR MARGETT: Well, in other words, that's a
19 local decision that's being made by local school boards and
20 what they want as far as the quality of their buildings'
21 interior and so on and so forth.

22 But they don't have anything to say about the
23 structural value of it, the roof and the rest of the stuff
24 that's necessary to be able to put the component together.
25 That's not even their decision to make, if I'm correct.

1 MR. HANCOCK: I would agree with your summary.

2 SENATOR MARGETT: But what about manufacturers?
3 Are we just dealing with one or two manufacturers in the
4 state? Do we have oligopoly situation or -- pretty
5 competitive in the state?

6 MR. HANCOCK: There are a number of
7 well-established modular manufacturers and portable
8 manufacturers in this state. Modular may be a little bit
9 more of a specialized business than the portable
10 manufacturing. There are a large number portable
11 manufacturers.

12 But perhaps there's someone here who will make a
13 presentation today that could answer that better. But I can
14 tell you that I know of at least a half a dozen portable
15 manufacturers in this state that work with us in our portable
16 program and probably I know of two or three established
17 modular manufacturers in the state that I am personally aware
18 of.

19 And as to your question about are these ever
20 exported outside of the state boundaries --

21 SENATOR MARGETT: Imported. In other words, are
22 we looking --

23 MR. HANCOCK: Oh, imported -- brought in from
24 outside --

25 SENATOR MARGETT: -- to Arizona or Oregon or

1 someplace to get these modular buildings or all built here.

2 MR. HANCOCK: I can't answer that. The modular
3 components that we looked at are being manufactured in
4 California and inspected in California.

5 SENATOR MARGETT: Okay. Can we get just -- move
6 away from the modular building aspects -- this piggyback --
7 the whole concept of piggybacking.

8 Let's just say that there is a school district
9 that wants to buy five cars and they go out to bid and they
10 get this and subsequently another school district likes the
11 price of those Ford Victorias and they go to the same dealer
12 and get it for the same price. Is that in essence what
13 piggybacking is?

14 They don't go out to bid. They're just going to
15 ahead. They're satisfied because there are six bidders
16 bidding on these Ford Victorias. They like the price, so
17 they go ahead and issue purchase orders to cover the same
18 vehicle? In essence, is that what we're doing in the modular
19 field?

20 MR. HANCOCK: I think that's again a fair summary.

21 SENATOR MARGETT: Okay.

22 CHAIRPERSON OROPEZA: Assemblywoman Goldberg.

23 ASSEMBLY MEMBER GOLDBERG: What is the definition
24 of a public works project?

25 MR. NESS: It's contained in your item on -- as

1 Public Contract Code Section 22002, right there underneath
2 the 2011 --

3 MR. HANCOCK: On page 236, about halfway through
4 the paragraph. I'm sorry.

5 CHAIRPERSON OROPEZA: 234?

6 MR. NESS: Page 234.

7 ASSEMBLY MEMBER GOLDBERG: 234?

8 CHAIRPERSON OROPEZA: Yeah.

9 MR. HANCOCK: Oh, I'm sorry. Excuse me.

10 ASSEMBLY MEMBER GOLDBERG: Okay.

11 MS. WILSON: Right here, talk about the amount of
12 money.

13 ASSEMBLY MEMBER GOLDBERG: Construction,
14 reconstruction, erection, alteration, renovation,
15 improvement, demolition, and repair work including any
16 publicly owned, leased, or operated facility.

17 Would these modulars therefore be public works?

18 MR. HANCOCK: It's my understanding that a
19 decision -- a court decision was made a number of years
20 ago -- not a recent decision -- that found that relocatable
21 classrooms could be considered personal property, and they
22 are bought that way today even by the state.

23 ASSEMBLY MEMBER GOLDBERG: Okay. But once they're
24 erected permanently?

25 MR. HANCOCK: It's --

1 ASSEMBLY MEMBER GOLDBERG: I mean I'm assuming if
2 you're building a school it's not temporary. Otherwise we
3 don't usually allocate money for temporary schools, do we?

4 MR. HANCOCK: Correct. That is correct.

5 ASSEMBLY MEMBER GOLDBERG: So we're talking about
6 permanent housing within the length of the useful life of
7 these buildings.

8 MR. HANCOCK: We are, Assembly Member.

9 ASSEMBLY MEMBER GOLDBERG: So once it becomes
10 permanent, is it personal property?

11 MR. HANCOCK: Once it becomes installed, I believe
12 it becomes real property. It's a school now.

13 The distinction I think can be made that the
14 construction in a plant, as long as it's a relocatable
15 classroom, can be purchased under piggybacking contracting
16 because it's not considered a public works project. It's
17 considered a -- personal property as though you would buy a
18 vehicle.

19 ASSEMBLY MEMBER GOLDBERG: So you could sell a
20 30-classroom school and it's all personal property.

21 MR. HANCOCK: If it were relocatables.
22 Relocatables -- modular -- I mean -- excuse me. The
23 terminology is tricky here.

24 Relocatable classrooms. That is what has been
25 judged to be --

1 ASSEMBLY MEMBER GOLDBERG: Are these set down in a
2 fashion that's intended to relocate them?

3 MR. HANCOCK: Not normally.

4 ASSEMBLY MEMBER GOLDBERG: See, I -- the problem
5 I'm having here is not the piggyback problem. I have no
6 problem with piggyback. I think it's the greatest thing
7 we've done because the volume that big districts have helps
8 out little districts. That's the way it should always be.

9 My problem is, is with the competitive bidding
10 problem. And if we're going to start building schools that
11 are permanent and using this gimmick of calling them
12 nonpermanent, then I want to know whether or not we're going
13 to change rules and say that they're no longer eligible for
14 state funding.

15 Because, you see, I want to build permanent
16 schools and I don't want hanky-panky about this competitive
17 bidding business because you're going to open us up to kinds
18 of little sweetheart deals that may help somebody, but it
19 ain't going to help everybody.

20 And I'm very worried about this. And I know
21 there's a union issue, but believe it or not, that's not the
22 issue I'm worried about. I'm worried about collusion.

23 You see -- especially if you tell me there are
24 only two or three of these that are doing these modular ones
25 that you're talking about.

1 This is very serious. I looked at a couple of the
2 things in this letter from whoever is speaking here and he's
3 talking about -- and I know he's worried about the union
4 issue and I am too, but that's a different issue.

5 But he's talking about \$7 million of nonpermanent
6 personal property. I don't believe that we ever intended to
7 have \$7 million expended on a site for nonpermanent personal
8 property without having any kind of bidding process that
9 guarantees that we're not going to get scammed, the last guy
10 in, et cetera, et cetera.

11 So I have to say to you that while I worry about
12 the union stuff, I don't deny that, the competitive bidding
13 part of this gives me great pause.

14 If you're talking about two or three modulars, I
15 don't have any problem with that. You know, even a small
16 school addition of two or three modulars. Because I look at
17 the prices, may be cheaper, and those will move. If the
18 population declines, you can pick them up and move them.

19 You're talking about 7 million, 5 million,
20 \$4 million schools without competitive bidding, I have a
21 problem with this.

22 SENATOR MARGETT: One more comment.

23 CHAIRPERSON OROPEZA: Yes. Senator --

24 SENATOR MARGETT: As Member Goldberg was talking
25 there, I was thinking of all of sudden something that

1 becomes -- or in a temporary sense, all of a sudden enters
2 into the long term, and I don't know exactly where that was.

3 I'm older than you are, but let me take you back
4 to about 1945, '46, when we couldn't build schools and we had
5 Quonset huts by the military. And I tell you the schools
6 were gobbling them up like crazy.

7 Well, guess what, I come from a rather affluent
8 community, Ms. Goldberg, and believe it or not, Quonset huts
9 are still there today and that's 50 years later. So I don't
10 know when the temporary aspect of things becomes the long
11 term and I think those Quonset huts would probably last
12 another 50 years to be honest with you.

13 So I mean I don't know whether we want to even get
14 into that today, but there's an aspect of that also
15 temporary --

16 ASSEMBLY MEMBER GOLDBERG: Well, but the
17 difference is -- and when you get into larger dollar amounts,
18 Senator, and you're not competitively bidding it, that's my
19 concern. There's awful lot of room for hanky-panky when you
20 do that.

21 I've been in a number of places and I've seen a
22 number of things, and when you begin remove competitive
23 bidding -- and this looks now -- begins to look like sole
24 source contracting by another name -- if you're talking about
25 a few relocatables that really could move if the population

1 shifted, that's one thing. I have no problem with that.

2 But if you're talking about numbers like
3 5 million, \$7 million and building whole schools out of this
4 stuff, then --

5 SENATOR MARGETT: Well, the only -- you know, 5-,
6 \$7 million, I mean if we're into that -- I got to tell you 5-
7 or \$7 million is hardly a ham sandwich anymore, Ms. Goldberg,
8 in the school districts.

9 (Laughter)

10 SENATOR MARGETT: I mean I don't mean to minimize
11 what you had to say. I get your point. Matter of fact, I've
12 got every single point that you've ever stated in your whole
13 life, but by the same token, I think that we may not be
14 really -- we may be chasing rainbows on this thing.

15 Once you have something that is produced at the
16 factory and they've got the lowest cost they possibly can and
17 they're going out there and XYZ school district has been out
18 there to bid and this thing is running you 102,000.35 and
19 that's what it is and everybody else says hey, that's not
20 bad, I don't know that there's necessarily collusion on that,
21 and I've been in the construction business virtually all my
22 life and I got to tell you, somebody's got to show me where
23 the collusion is because I've bid to virtually every single
24 entity in the State of California and I've yet to see
25 collusion.

1 CHAIRPERSON OROPEZA: I'm going to go to
2 Assemblywoman Daucher and then Mr. Sickler.

3 ASSEMBLY MEMBER DAUCHER: My question has to do
4 with what -- who oversees what, what our role is, what
5 responsibilities and authority the State Allocation Board
6 has. I'm struck by the first sentence on page 237 under
7 summary. "The district contractual arrangements by which
8 projects are constructed using state bond funding are
9 governed by law and are not generally subject to SAB
10 regulation or oversight."

11 I want someone to --

12 ASSEMBLY MEMBER GOLDBERG: Read the next sentence.

13 ASSEMBLY MEMBER DAUCHER: I want -- all right.
14 I'll read the next sentence. "However, the integrity, the
15 use of" -- I got it -- "of the bond funds that we allocate
16 reflect upon us and our whole program and must be above
17 reproach."

18 I think that's exactly right, Ms. Goldberg. So
19 I'd like someone to explain to me a little bit more about,
20 you know, what the law says and what authority the State
21 Allocation Board has considering both sentences that were
22 read.

23 I don't think it's so much an issue of whether
24 it's temporary or permanent. I think it's more an issue of,
25 you know, law and what our, you know, authority,

1 responsibility to the integrity of the State Allocation Board
2 is.

3 MR. HANCOCK: There may be two parts to that. One
4 is that the law prohibits the Allocation Board from funding
5 projects that do not comply with law or more positively
6 stated, projects must comply with all applicable laws before
7 the Allocation Board can fund them.

8 ASSEMBLY MEMBER DAUCHER: And that means laws
9 that -- are we obligated -- it's within our responsibility
10 then to check and make sure that that happens?

11 MR. HANCOCK: Typically we do not. What we do and
12 the way this Board has set it up because all applicable laws
13 could be an enormous undertaking, we ask districts to certify
14 as a part of the process that they have complied with all
15 applicable laws.

16 And they do that and of course we would not fund
17 or recommend for funding a project that -- where the district
18 had not made that assertion. Therefore I can assure you that
19 on all the projects that we're talking about we do have such
20 a certification from the districts.

21 ASSEMBLY MEMBER DAUCHER: Okay. But now reading
22 this whole report here, we see that this is not -- this is
23 kind of an uncharted area, that there is some debate about it
24 in some quarters. Now it's been brought to our attention.
25 Now we know about it.

1 So now what is our responsibility now that we know
2 about this? What -- let's carry it one step further.

3 MR. HANCOCK: I might ask the Board's attorney for
4 a little help, but I believe the staff opinion would be that
5 you do not have a responsibility to enforce the Public
6 Contract Code or any other law.

7 Clearly if we were aware of a violation -- for
8 instance, if we were doing an audit and we came across a
9 clear violation -- we would bring that before this Board as
10 an issue.

11 But these issues that we're talking about here are
12 not necessarily clear violations. There are folks I'm sure
13 that will testify to you that what the districts are doing is
14 legal.

15 We happen in our opinion to have some question
16 about that, but it is nonetheless a debatable point. So we
17 would not bring to you under normal circumstances a
18 piggybacking contract as has been described here as a
19 violation of law because it is a debatable issue and the
20 district has certified and probably has an attorney's opinion
21 that what they're doing is acceptable.

22 ASSEMBLY MEMBER DAUCHER:

23 MR. NESS: That's essentially what I would advise
24 the Board, that essentially the Board's authority is to
25 evaluate the program and make sure that the program funds are

1 expended in accordance with the laws of the school facilities
2 program. It doesn't have broader authority to police the
3 Public Contract Code or the Labor Code or those kinds of
4 matters. It's essentially limited in its authority to what
5 the Legislature has given this Board.

6 These particular issues are generally outside the
7 ambient of the Board's authority as long as the school
8 districts have indicated that they are certifying under the
9 Board regulations, that they comply with law.

10 And in identifying in these contracts, looking
11 anecdotally at the contracts that we did review for purposes
12 of this report, they'd have counsel advising their boards
13 that they're legal.

14 Assembly Member Goldberg has obviously the legal
15 conundrum we have here. We've got two competing statutes.
16 We have the Public Works Statute which tells you you have to
17 competitively bid it and you have this other statute, and we
18 don't have any case law that I've been able to find that has
19 been able -- that has addressed this issue.

20 And until we do that, I really can't give you any
21 sort of definitive opinion as to whether or not it's, you
22 know, outside the scope.

23 ASSEMBLY MEMBER DAUCHER: Okay. Let me follow
24 this one step further. Let's suppose we just sit back. Some
25 district gets challenged on this and suppose it's found not

1 to be correct.

2 MR. NESS: Um-hmm.

3 ASSEMBLY MEMBER DAUCHER: What would -- what's the
4 remedy then if it's not be correct? What's the remedy? The
5 school's been built or is in the process of being built.
6 What's the remedy?

7 MR. NESS: Under California law, if a public
8 agency does not follow the methodology set forth in the law
9 to award a contract, then that contract's void and
10 unenforceable.

11 ASSEMBLY MEMBER DAUCHER: So where -- what does
12 that mean about the money that we have given that district?

13 MR. NESS: Well, the Board would have to be faced
14 with the choice of going back and getting that money or
15 essentially proceeding prospectively to indicate that they
16 would not be funding projects in that manner.

17 ASSEMBLY MEMBER DAUCHER: So what happens with the
18 money that's been expended at that point?

19 MR. NESS: Well, if it was the school district,
20 they would have -- they may well have the obligation to go
21 out and attempt to recoup the funds that have been spent
22 illegally if it's found that it's an illegal contract.

23 That's really the risk that school districts are
24 going by choosing this task is that -- this path. If it is
25 found to be a void process, then they've put the funds at

1 risk. They've put the contract at risk

2 ASSEMBLY MEMBER DAUCHER: Do they put us at risk?

3 I mean does it risk our money, our -- the state
4 contribution?

5 MR. NESS: Well, they would be using the state
6 contribution in building that --

7 ASSEMBLY MEMBER DAUCHER: Correct.

8 MR. NESS: -- so --

9 ASSEMBLY MEMBER DAUCHER: So then I mean no one's
10 going to tear the school down.

11 MR. NESS: No. No.

12 ASSEMBLY MEMBER DAUCHER: So the money's going to
13 have been used in some fashion.

14 MR. NESS: That's right.

15 ASSEMBLY MEMBER DAUCHER: The school is going to
16 be built.

17 MR. NESS: Right.

18 ASSEMBLY MEMBER DAUCHER: So I guess my -- you
19 know, the question for me -- the next question would be have
20 we been damaged in a sense. Has money been wasted or has
21 money been spent unnecessarily.

22 MR. NESS: Yeah.

23 ASSEMBLY MEMBER DAUCHER: And it really in some
24 sense doesn't matter if it's the district money or our money
25 because --

1 MR. NESS: Yeah.

2 ASSEMBLY MEMBER DAUCHER: -- if the district's
3 having problem, eventually it's probably going to come on our
4 doorstep.

5 MR. NESS: Yeah. I think the program has limited
6 risk because this program is a grant program and it's given
7 pursuant to grants that the district is eligible for. That
8 district's used up that eligibility when they come and get
9 this money. So since they've used that money, they've
10 accounted for that eligibility. So the Board has done its
11 job with respect to expending those funds and making those
12 grants.

13 ASSEMBLY MEMBER DAUCHER: So you view it more as a
14 financial hardship on the district not --

15 MR. NESS: Exactly. Yeah.

16 CHAIRPERSON OROPEZA: Mr. Sickler.

17 MR. SICKLER: For me this is an issue of billions
18 of dollars for a public fund, for public schools, not for
19 portables. I mean we're talking about apples and oranges
20 here when we talk about portables versus modulars.

21 We're talking about modulars that are advertised
22 to be permanent structures for a hundred years or more, to
23 quote one of the letters from one of the companies.

24 We're talking about a company that's growing at a
25 158 percent a year -- one of these companies -- that is

1 bidding under the cover and even acing out other modular
2 builders. The public has no idea what's going on with this
3 transaction and instead of being a ham sandwich where we're
4 just talking about millions of dollars, we're talking about
5 billions of dollars that comes through this State Allocation
6 Board.

7 And going from a ham sandwich to Wal-Mart is more
8 like it. I see school districts that are underfunded, that
9 are desperate for funding, desperate to build schools using
10 this system as an out, and I understand that. But it's still
11 gaming the system.

12 It's public works. It's public jobs. It's clear
13 as a bell to me that that's the way it's written. I'm not an
14 attorney.

15 So what I would recommend -- I call for a
16 moratorium on spending any more State Allocation funds on
17 modular construction and refer this issue to the Attorney
18 General's office.

19 SENATOR MARGETT: So that we can get a union shop
20 where we're building these modulars? Is that what you're
21 trying to tell me and this audience?

22 MR. SICKLER: Bob --

23 SENATOR MARGETT: Malarkey. Baloney.

24 MR. SICKLER: Bob, I think you should look past
25 your paranoia and fear of unions and --

1 SENATOR MARGETT: I don't have any fear of unions.

2 MR. SICKLER: -- and look at this issue for what
3 it is.

4 SENATOR MARGETT: I've been a union man longer
5 than you have, Dave. Don't tell me that.

6 MR. SICKLER: This is a --

7 SENATOR MARGETT: I have no fear of the unions.

8 MR. SICKLER: Well, this -- every time this
9 issue's been brought up, that's where you go first, Bob.
10 This is an issue --

11 SENATOR MARGETT: That's -- you're always there.
12 You're always there, Dave.

13 MR. SICKLER: This is an issue of public bidding.

14 SENATOR MARGETT: It is an issue.

15 MR. SICKLER: Public work, public bidding.

16 SENATOR MARGETT: It has been there in place for
17 years and years and years. You know it and I do too. You're
18 making a union issue, plain and simple.

19 MR. SICKLER: It's not a union issue.

20 SENATOR MARGETT: And everybody here knows it's a
21 union issue.

22 MR. SICKLER: That's not a union issue. We --

23 SENATOR MARGETT: It is a union issue.

24 MR. SICKLER: We got people here who'll testify to
25 the difference and you can throw those smoke bombs all you

1 want. You can't hide the fact.

2 CHAIRPERSON OROPEZA: Can we hear from the three
3 public speakers, please, because I don't think we're going to
4 resolve this issue.

5 SENATOR MARGETT: And I was going to give you some
6 of my Christmas cookies, but I decided not to.

7 MR. SICKLER: I'll eat them if somebody tastes
8 them first.

9 MR. WINER: Good afternoon. My name is Steve
10 Winer and I'm the Executive Secretary-Treasurer of the Santa
11 Barbara/San Luis Obispo Building Trades Council. And here
12 today, we're going to talk about two issues.

13 First of all, I represent thousands of working
14 families that live in these communities. The two issues
15 we're going to talk about today is the purchase order and
16 piggybacking of these orders and building schools.

17 We feel that using a purchase order bypasses the
18 public contract law and creates an unfair playing field for
19 contractors. We feel that the construction of any public
20 building should be open to the public -- open to public bid
21 on all phases of the construction.

22 Doing it this way will create a fair playing field
23 for all contractors and is in the best interest of the
24 community.

25 I just also want to say that I've been approached

1 by union and nonunion contractors to look into this and to
2 come up here and comment on this. So it's not just a union
3 issue. It is also a nonunion issue of the contractors not
4 being able to bid on the projects that are surely and
5 definitely construction.

6 You ask any electrician or carpenter if it falls
7 underneath construction or not, and these buildings are
8 construction.

9 The second issue is safety. We have seen these
10 buildings -- modular buildings come on the job site with
11 electrical systems not properly installed, electrical conduit
12 not being reamed where wires can be rubbed and electrical
13 hazard can be created.

14 We've seen fixtures hanging from the ceiling.
15 We've seen moisture in the walls which can create mold and
16 create hazardous location.

17 I myself have a four-year-old granddaughter who
18 will be starting school in the Santa Maria school system next
19 year, and I feel like so many others that the children should
20 not only have the best learning environment, but also the
21 safe learning environment.

22 There will be other people up here to do some
23 presentation on more specifics on this and I thank you for
24 your time and I hope that the input I've had will help you
25 make a decision. Thank you.

1 CHAIRPERSON OROPEZA: Thank you. I think this is
2 just a --

3 SENATOR MARGETT: Excuse me. You're with the --
4 I'm sorry.

5 CHAIRPERSON OROPEZA: Sure. No, go right ahead.

6 SENATOR MARGETT: I didn't mean --

7 CHAIRPERSON OROPEZA: Go right ahead.

8 SENATOR MARGETT: I wanted to ID you one more
9 time. You're with the Building Trades Council in San Maria?

10 MR. WINER: Santa Barbara/San Luis Obispo County.
11 Santa Maria is one of the communities that I represent.

12 SENATOR MARGETT: Okay.

13 CHAIRPERSON OROPEZA: And this is --

14 MR. WINER: And I also had a nonunion contractor
15 from Santa Maria who called and asked me to come up here to
16 speak on this because he is very concerned on it.

17 SENATOR MARGETT: Who is it?

18 MR. WINER: The contractor?

19 SENATOR MARGETT: Yeah.

20 MR. WINER: It was a plumbing contractor.

21 SENATOR MARGETT: Who was it?

22 MR. WINER: Kols Miller.

23 SENATOR MARGETT: Cold, C-o-l-d? C-o-l-d?
24 K-o-l-d?

25 MR. WINER: K-o-l-s.

1 ASSEMBLY MEMBER GOLDBERG: K-o-h-l probably.

2 MR. WINER: K-o-l-s I believe it is. Kols Miller.

3 SENATOR MARGETT: And he's out of where?

4 MR. WINER: Santa Maria.

5 SENATOR MARGETT: And he's a union contractor?

6 MR. WINER: No. He's a nonunion contractor.

7 SENATOR MARGETT: Oh, okay.

8 MR. WINER: He's okay then?

9 SENATOR MARGETT: Sure.

10 MR. WINER: Thank you.

11 CHAIRPERSON OROPEZA: And just so we're clear,
12 this is information only. We're not voting on anything today
13 so -- if I can have the other two -- I think there was two
14 other speakers and then --

15 MR. COYLE: Sorry to take so long.

16 CHAIRPERSON OROPEZA: That's quite all right.

17 MR. COYLE: My name is John Coyle. I'm with --
18 I'm the Vice President and Chief Operations Officer for
19 Superior Quality Control. It's an inspection firm that I
20 founded in 1993 when we incorporated following my dba.

21 I spent 17 years as a superintendent on a nonunion
22 general engineering firm working mostly at Ft. Ord and in
23 other public works jobs. It was a woman-owned business.

24 When that closed in 1980, I started working for
25 testing laboratories. I eventually got into contract

1 inspections. I have been a DSA inspector since 1984. I've
2 been a hospital OSHPD A level since 1985.

3 During my career, I have been a city building
4 inspector. I have set up a brand-new building safety
5 division. It was the first one in East Palo Alto after their
6 incorporation.

7 I'm an elected member of the school board, and I
8 have been an inspector on the Turnkey products in Santa
9 Maria. I have visited their plant twice. I like their
10 plant. I like the concept, and I feel that contrary -- by
11 the way, I'm not a union member and our firm is nonsignatory.

12 I think that if we have buildings constructed
13 indoors year-round, not worried about weather or laying
14 off -- and that's one of the reasons why trade unions get the
15 high salaries they do is because they can look forward to
16 some time off and it's reasonable.

17 I can see where if they are organized inside a
18 building, a manufacturing plant to make buildings, where they
19 would be getting a lower rate of pay. I can see where this
20 would benefit a school district, and as a school board
21 member, I'm concerned at what we pay.

22 But my primary concern is I want the quality. And
23 when I was in Santa Maria, I had a lot of problems with the
24 work that was being delivered to the job site. The concept
25 was good. The quality level was zilch.

1 We had welding come out that was going to be up on
2 a -- I don't know how to describe it to you. It's a second
3 story, but it's not a true story. It was above the first
4 story. It wasn't welded properly. The welds did not have
5 the slag removed.

6 And the slag is a material that formed during the
7 course of welding to protect the weld and allow it to cool
8 properly. You're supposed to knock that off so you can
9 evaluate the weld.

10 They were terrible. They were loaded with holes,
11 pits. They had burned holes in the metal and I was
12 admonished by the superintendent and by an individual who I
13 understand held the contractor's license -- his name was
14 Doc -- for Turnkey at the time, that this is none of my
15 business. This was all inspected in the factory.

16 During my visits to the factory -- and there were
17 two of them -- I did not see the inspector until after he had
18 been called and about 30 minutes later, he showed up. There
19 was a lot of work going on. There were buildings being
20 processed. It was a Henry Ford assembly line.

21 And it's a good concept. I support it firmly. I
22 have talked to my district about the possibility of using
23 them, but I've also said if we do we put our own inspector in
24 the plant.

25 And we have a problem with the inspection because

1 while I've done a lot of things -- I've carried ICEO
2 certifications in plumbing, mechanical, building, concrete,
3 masonry, fireproofing -- I don't feel I'm an expert on
4 electrical. I feel very comfortable with all the rest of the
5 trades.

6 So one of the employees in our company is a
7 licensed electrical contractor. He's -- frankly he's a whiz.
8 He invented a system they use at the airports now where
9 private pilots can click on their mic several times and turn
10 on the landing lights when they come in and he installed
11 these all over here and Lake Tahoe area to start.

12 I had -- I paid out of my pocket for him to come
13 down because I had some suspects about the electrical. It
14 didn't comply with the specifications. It didn't comply with
15 code, and we wrote up a couple of pages, again at no cost to
16 the district, of problems that had been delivered to the job
17 site.

18 I've been after DSA and I know Richard can
19 probably tell you, but he's got his hands tied. And I talked
20 to Steve quite a while before he left. I wanted to see them
21 actually comply with the code and certify electrical
22 inspectors. It's our weakest product in schools and it's a
23 very weak product in modular buildings.

24 I brought with me a copy of specifications that I
25 was given by CSS Architects. This is for GV Custom Modular.

1 GV went bankrupt. GV was providing both the site development
2 and the buildings delivered to the site.

3 This is what I was given for specifications. It
4 says Lafayette Term Contract. There are no stamps by
5 architects. There are no stamps by engineers, either
6 structural, mechanical, or electrical, and it didn't see the
7 light of day at DSA I don't believe because there's no DSA
8 stamp on it.

9 I went into the DSA office in Oakland and they
10 told me these buildings are all preapproved, but the
11 specifications that had been given on the buildings to DSA
12 was the site spec book. It had nothing to do with the
13 buildings.

14 When I looked at the drawings and I saw that we
15 had a two-hour firewall and I checked it out when it came.
16 I'm fairly knowledgeable of this, having inspected a lot of
17 hospitals dealing with Type 1, Type 2, and Type 5 fire-rated
18 construction. We didn't have the firewall.

19 When we had penetrations in what were supposed to
20 be rated walls, there were no fire dampers that will close
21 and prevent the spread of fire and smoke.

22 So we have a problem with the in-plant inspection
23 and I pay my own electrical inspector, but I think you'll
24 find that there's a problem with on-site electrical.

25 And one last thing before I close, I'll tell you

1 about a school in Santa Clara County. They had modernization
2 done. They converted a classroom to a computer lab. So they
3 did a bunch of in-wall wiring.

4 Well, lo' and behold, that classroom caught fire.
5 There was a problem with the electrical, and it burned the
6 whole damn school down. \$9 million.

7 I've talked to the GPA Insurance and I may be
8 working with them as a consultant, getting 10 percent of
9 everything I save on recovery, and if I can show that it
10 didn't comply with the code, it was never inspected properly,
11 I may make \$900,000, but the school district will be out
12 9 million. I think we need to look at that.

13 So leaving with that, also quality control, it's
14 in the specs. It talks about that in every bit of quality
15 specs that's given. And per OPSC, I spoke to a lady up there
16 because I've got some problems in my district. We've had
17 some hanky-panky going on, failure to bid projects and
18 sweetheart deals. And I don't know whether the guy lined his
19 pocket or not, but in my opinion, he had no other reason for
20 doing it.

21 Quote: Several districts have had to reimburse.
22 So that is a possibility.

23 And I thank you for your interest, Ms. Goldberg.
24 Appreciate it. Thank you very much.

25 CHAIRPERSON OROPEZA: I think we have a question.

1 SENATOR MARGETT: May I just ask one question
2 while you're here.

3 MR. COYLE: Oh, sure. Absolutely.

4 SENATOR MARGETT: Was this contractor indicted,
5 the one that there was hanky-panky and the other things that
6 you referred to with regards to his bid and --

7 MR. COYLE: The one --

8 SENATOR MARGETT: -- chicanery that was taking
9 place?

10 MR. COYLE: The one I just mentioned in my
11 district where I used that term?

12 SENATOR MARGETT: Yes, sir.

13 MR. COYLE: We encouraged the superintendent to
14 leave. The director of facilities who signed the purchase
15 orders is gone. He's now selling real estate.

16 SENATOR MARGETT: Okay.

17 MR. COYLE: Don't buy a house.

18 SENATOR MARGETT: But were the people of that
19 district served -- was there an indictment made by the
20 District Attorney with regards to this issue?

21 MR. COYLE: Not yet. I have only recent --

22 SENATOR MARGETT: Oh, it's pending.

23 MR. COYLE: I have written a letter to the
24 District Attorney. I have also cc'd the Attorney General's
25 office since it was state funds involved as well.

1 SENATOR MARGETT: Okay.

2 MR. COYLE: I --

3 SENATOR MARGETT: Well, that's where you should
4 go.

5 MR. COYLE: Absolutely.

6 SENATOR MARGETT: I mean that kind of stuff, we
7 can't have that.

8 MR. COYLE: I'd be happy to send you a copy,
9 Senator.

10 SENATOR MARGETT: Keep me posted.

11 MR. COYLE: I sure will. Thank you very much.

12 CHAIRPERSON OROPEZA: Okay. And I think we had
13 one other speaker.

14 MR. FOREMAN: My name is Mark Foreman. I am a
15 union representative and proud of it. I represent Santa
16 Barbara County Plumbers Union which covers Santa Maria City.

17 And if I may address one of the Board members, the
18 Honorable Bob Margett.

19 SENATOR MARGETT: Yeah.

20 MR. FOREMAN: You've made quite an issue about
21 making this a union issue, and the reason that it is a union
22 issue is because it was a union representative who uncovered
23 the misuse of the piggyback laws and the violations of the
24 competitive bidding laws. And that's why it's a union issue
25 because we uncovered it.

1 I would like to also note that on \$100 million
2 worth of projects that were done in the Santa Maria-Bonita
3 School District using modular construction, I would have to
4 guess, but I'm estimating between 50 and 60 percent of the
5 work that was done on site was done with union labor.

6 So, you know, it's not that we -- that the union
7 labor hasn't done any of this work and that's why we're here.
8 We're here because there's violations of the Public Contract
9 Code that concern all the local contractors and statewide
10 contractors that normally bid on public works jobs.

11 I'd like to read my prepared remarks now. Part of
12 my job description is to monitor public works. I've been
13 monitoring the modular school construction in Santa Maria for
14 almost two years.

15 I have witnessed millions upon millions of dollars
16 worth of public funds being spent on poor quality modular
17 buildings that have not been competitively bid.

18 The projects I am familiar with consist of four
19 brand-new elementary schools, one brand-new junior high
20 school, new classroom buildings at three separate elementary
21 schools and three separate junior high schools, five new
22 libraries and eight new multipurpose rooms consisting of
23 gymnasiums, cafeterias, and the like at various schools in
24 the same school district.

25 Public Contract Code 20111 clearly states that any

1 public works construction project valued at \$15,000 or more
2 must be competitively bid, and Public Contract Code 22002
3 defines a public works project as any of the following, as
4 Jackie pointed out, construction, reconstruction, erection,
5 alteration, renovation, improvement, demolition, and repair
6 work involving any publicly owned, leased, or operated
7 facility.

8 When I met with the school districts in Santa
9 Maria to discuss their obligation under the Public Contract
10 Code, I was informed that the district did not even consider
11 any of these projects to be public works. How then I asked
12 were they entitled to public school construction funds.

13 My informal discussions with the district turned
14 to official requests for information under the California
15 Public Records Act -- this is what I do for a living is I
16 monitor public works jobs -- many of which were denied.

17 They were denied because according to the district
18 we did not have the right to request the information because
19 these projects in question were not considered public works.
20 Finally after much persistence on my part and objections on
21 the part of the school district, I was privileged to receive
22 copies of some of the contracts with the modular school
23 constructor -- the modular supplier.

24 These documents in the form of purchase orders
25 showed the use of piggyback contracts. Public Contract Code

1 Section 20118 allows for school districts to use piggyback
2 contracts only for purchasing personal property, such as
3 chalkboards, computers, or vehicles.

4 However, in these cases, the district had entered
5 into agreements to purchase entire school buildings utilizing
6 the piggyback provision. Buildings of this nature are
7 considered real property not personal property. They are
8 fixed to the land and are not considered relocatable.

9 One purchase order was in excess of \$29 million.
10 That's a lot of ham sandwiches.

11 The district justified the use of piggybacking
12 because it was easier and more cost effective. And I might
13 note driving up here from Santa Barbara County, I was sitting
14 next to an attorney who said looks like we're going to be
15 late. The speed limit was 65 and he advised me to do 90, but
16 we don't want to break the law regardless of how urgent
17 something seems or how cost effective it may seem.

18 Not only were prefab modulars being themselves
19 piggybacked, but so was all on the on-site labor and
20 materials needed to accommodate these structures once they
21 arrived on site. These included grading, the underground
22 water supply, the underground electrical and sewage, the
23 concrete slabs for which the buildings were to be set on and
24 welded to imbedded steel plates in the concrete, all of which
25 are defined in the Property Tax Code as being real property.

1 It should be noted that in the marketing material
2 distributed by a particular modular constructor that the
3 supplier encourages the use of piggyback contracts. This can
4 lead to many school districts to fall prey to the same
5 violations of the Public Contract Code which I have witnessed
6 in Santa Maria.

7 These are clear violations of Public Contract
8 Code 20111 and the piggyback provisions allowed under
9 Section 20118 for personal property not to mention the fact
10 that an entire school could be built with public funds and
11 not be considered a public works project.

12 Just because it is more convenient or possibly
13 more cost effective to use piggybacking for real property, no
14 district or contractor should be allowed to pick and choose
15 which laws they will adhere to and which laws they will not.

16 The State Allocation Board should address these
17 violations, and I respectfully ask the Board to consider
18 putting a hold on all funds earmarked for modular
19 construction projects until these issues can be resolved.

20 Thank you for allowing me to speak on this issue.
21 Copies of my comments with supporting documents were made
22 available to the Board. I too am available for any questions
23 the Board may have.

24 CHAIRPERSON OROPEZA: Assemblywoman Goldberg.

25 ASSEMBLY MEMBER GOLDBERG: Actually it's just a

1 comment because unfortunately I'm going to have to leave.
2 I'm concerned -- we were just chatting here on two levels.
3 I'm concerned on the inspection level now that I've heard the
4 previous testimony.

5 We may have a serious inspection problem, and I
6 would like to ask if we could at our next meeting get some
7 information about how we check on inspections done in
8 factories to make sure that they meet our inspection
9 standards.

10 The reason I say that is I have buildings in
11 Los Angeles Unified that were built in 2002 and '03 that
12 weren't Field Act only because of inspections that are
13 excellent that we can't use to put a child in. Okay.

14 But we're willing to let buildings that may or may
15 not have ever been inspected because someone signed off that
16 they were inspected in a master contract. That's dangerous,
17 and so I'd like to get some feedback on what we do about
18 modulars or any of this.

19 CHAIRPERSON OROPEZA: Right. And I know there's
20 somebody here from DSA, but I know you have a time issue, so
21 if you could come back next time.

22 ASSEMBLY MEMBER GOLDBERG: Yeah. I'll just ask my
23 questions and then I'll get your answers later.

24 CHAIRPERSON OROPEZA: Yeah.

25 ASSEMBLY MEMBER GOLDBERG: I'd also like to get

1 some information about what we do to check that on-site
2 inspections of modulars and temporary buildings that are made
3 permanent -- I mean the inspection issue's a very important
4 issue both in the factory and on site.

5 And finally I'd like to get somebody to just tell
6 me if as a taxpayer someone wanted to challenge on the public
7 works issue of this -- because I -- you know, I may be jaded,
8 but having worked in LA Unified and the City of Los Angeles
9 and I was on the public works committee, every time we got
10 into this business where we weren't bidding there was
11 something wrong.

12 Now maybe that's not true in smaller areas and I
13 admit I don't know much about smaller areas. I've been in
14 big jurisdictions all of my life.

15 But I want to tell you something. This not
16 bidding comes back and it bites you. It doesn't bite you
17 immediately, but it comes back and it bites you. That's why
18 we insist on it.

19 And I want to know something about how we're going
20 to deal with this question because I see when -- you know,
21 again I said we're talking about a bungalow here, a bungalow
22 there. I'm a happy camper.

23 But if we're talking about building whole schools
24 this way and we're not going to have a competitive bid,
25 somebody's going to do this in a way and they'll make up what

1 they so-called saved the district another way somewhere else.

2 Maybe it's by not having inspectors in the factories. I
3 don't know.

4 All I'm telling you is I've been in too many big
5 jurisdictions and I've never been a contractor, but, you
6 know, I almost could get my license from having sat on the
7 public works committee and the City of Los Angeles.

8 This is a serious issue and I don't want to let it
9 drop here. Yes, there are union jobs that may or may not be
10 here, but we have lots of nonunion contracts on schools
11 already anyway.

12 So I don't see it as mostly that. I see it as a
13 safety issue from an inspection point of view and an issue of
14 good public policy when we're talking about spending large
15 amounts of money without bidding.

16 And I'd like to get some feedback from that at our
17 next meeting if we could agendize it.

18 CHAIRPERSON OROPEZA: Right. So if DSA could come
19 back and give us what the rules are --

20 ASSEMBLY MEMBER GOLDBERG: Okay. And I apologize
21 to all of you for leaving. Do you need me to make a vote
22 on --

23 CHAIRPERSON OROPEZA: -- and the procedures.
24 Sure. I'd like to go to the consent calendar right before
25 you leave --

1 ASSEMBLY MEMBER GOLDBERG: Okay.

2 CHAIRPERSON OROPEZA: -- and then we can come back
3 and hear more.

4 ASSEMBLY MEMBER GOLDBERG: Okay.

5 CHAIRPERSON OROPEZA: -- public comment.

6 ASSEMBLY MEMBER GOLDBERG: And I apologize. I'm
7 going to try not to have something scheduled after this that
8 I have to get to.

9 CHAIRPERSON OROPEZA: Okay. So if we can go to
10 the consent calendar.

11 SENATOR MARGETT: Dave and I might get into it
12 again. You don't want to miss that.

13 ASSEMBLY MEMBER GOLDBERG: Well, that was actually
14 more excitement than I've had in a while. I was going to get
15 popcorn -- all right. So if we'd take the consent item --

16 CHAIRPERSON OROPEZA: Yes. Go ahead and go to the
17 consent, please.

18 ASSEMBLY MEMBER GOLDBERG: So I don't leave you in
19 a lurch here.

20 MS. WILSON: Under Tab 4, we have the consent
21 agenda, and I request the Board approve the consent calendar
22 as presented.

23 ASSEMBLY MEMBER GOLDBERG: Move.

24 CHAIRPERSON OROPEZA: And I think that Member
25 Ellerbee was going to abstain from a couple of items on the

1 consent calendar.

2 DR. ELLERBEE: For the purpose of the consent
3 agenda and the consent specials, that's Tabs 4 and 6, I will
4 be abstaining from voting on all items relating to the
5 Sacramento City Unified School District. I will be voting in
6 favor of all the other items on the consent agenda and the
7 consent special items.

8 CHAIRPERSON OROPEZA: Okay.

9 SENATOR MARGETT: Move it.

10 CHAIRPERSON OROPEZA: And with -- I have a motion.
11 Do I have a second?

12 ASSEMBLY MEMBER GOLDBERG: Second.

13 CHAIRPERSON OROPEZA: Without objection then and
14 those changes on Member Ellerbee, then we'll approve -- move
15 the item.

16 MS. WILSON: Would you like me to go to the
17 consent specials?

18 ASSEMBLY MEMBER GOLDBERG: Yes.

19 MS. WILSON: Okay.

20 CHAIRPERSON OROPEZA: Sure.

21 MS. WILSON: Under Tab 6, would you like me to
22 describe them or do you just want to vote?

23 ASSEMBLY MEMBER GOLDBERG: I've read them.

24 MS. WILSON: Okay. Under Tab 6, we have the
25 deferred maintenance program funding. At this time, I'd like

1 to request that the Board approve the recommendations as
2 outlined on page 214.

3 ASSEMBLY MEMBER GOLDBERG: I'll move it.

4 ASSEMBLY MEMBER DAUCHER: Second.

5 CHAIRPERSON OROPEZA: Without objection, we'll
6 deem that approved.

7 MS. WILSON: Under Tab 7 --

8 MR. HANCOCK: 149.

9 MS. WILSON: I'm sorry. 149. Excuse me. Under
10 Tab 7, the school facilities program, time limit on
11 apportionment. I request that the Board approve OPSC's
12 recommendations as outlined on page 215.

13 ASSEMBLY MEMBER GOLDBERG: Move it.

14 ASSEMBLY MEMBER DAUCHER: Second.

15 CHAIRPERSON OROPEZA: Without objection, we'll
16 deem that approved.

17 MS. WILSON: Under Tab 8, school facilities
18 program, substantial progress fund extensions. I request
19 that the Board approve OPSC's recommendations as outlined on
20 page 217.

21 ASSEMBLY MEMBER GOLDBERG: Move it.

22 ASSEMBLY MEMBER DAUCHER: Second.

23 CHAIRPERSON OROPEZA: Without objection, we'll
24 deem that approved.

25 MS. WILSON: Under Tab 9, the school facilities

1 program, substantial progress reduction to costs incurred. I
2 request that the Board approve OPSC's recommendations as
3 outlined on page 220.

4 ASSEMBLY MEMBER GOLDBERG: Move it.

5 ASSEMBLY MEMBER DAUCHER: Second.

6 CHAIRPERSON OROPEZA: Without objection, we'll
7 deem that approved.

8 MS. WILSON: That's the end of the consent
9 specials. Thank you.

10 ASSEMBLY MEMBER GOLDBERG: And if your indulgence
11 one more time on page 143, we're still doing the 6 percent
12 reduction only the waiving them. At some point, I think we
13 should stop giving an incentive for multi-track year-round
14 schools and it may be time for us to look at that again. I
15 just thought I'd mention it.

16 CHAIRPERSON OROPEZA: I'd second that.

17 ASSEMBLY MEMBER GOLDBERG: Okay. Well, you know,
18 when we thought that it might be a useful idea, I appreciated
19 that we gave an incentive to do it. Now that we understand
20 the education implications of it, it's time for us to look at
21 that again.

22 I'm sorry. I apologize to all of you for leaving.

23 MS. WILSON: Should we start back at the top of
24 the agenda?

25 CHAIRPERSON OROPEZA: I'd like to actually finish

1 the piggyback issue.

2 MS. WILSON: Oh, okay.

3 CHAIRPERSON OROPEZA: I think we had one more
4 speaker and then I'd like to kind of wrap it up because since
5 it's not an action item.

6 MS. WILSON: Okay.

7 MR. HALL: Madam Chair, members of the Board, my
8 name is Eric Hall. I am Assistant Superintendent for
9 Business Services for San Dieguito High School District where
10 I have been -- I'm going on my 26th year in that district. I
11 also have the pleasure of serving as the Chair of the
12 Coalition for Adequate School Housing.

13 And just sitting listening to the dialogue on the
14 topic of the piggyback, I couldn't sit and be silent because
15 there's three very important points that I'd like to
16 stress -- actually four points.

17 The first is that just to let you know and so that
18 you are aware that piggyback bids are indeed open to public
19 bidding. By their nature, a district is going off of another
20 bid where they feel they can save time or save money.

21 But in no circumstances are we on a piggyback
22 going into buying buildings that haven't gone through the
23 public bidding process.

24 Number two, the district uses legal counsel on
25 these things. I've sat in discussions with our board, our

1 local labor folks in the community, our contractors and
2 discussed the ins and outs of this along with our legal
3 counsel, and the agency that originally did the bid also has
4 legal counsel.

5 So we aren't flying the face of law here. We're
6 complying with legal authority under the Public Contract Code
7 to pursue a building project.

8 The piece that the lawyers talked with us about is
9 those costs that are incidental to the installation. Where
10 we feel that there are costs that are incidental to the
11 installation below \$21,000 limit of labor and materials, that
12 portion of a piggyback portable installation, for example, is
13 indeed bid.

14 I can tell you an example of what I did recently
15 in installing 20 buildings that were temporary that are there
16 just for a year. The asphalt that those buildings were laid
17 was bid. The underground utilities that serve those
18 buildings were bid. The electrical that connected those
19 buildings together was bid as well as all the Internet
20 connectivity was all bid.

21 So I don't think -- and I couldn't just sit and
22 let the opportunity go by to not comment on the fact that
23 don't be misled to the fact that these projects are not bid
24 and are not open to public bidding.

25 The third point -- I think I've already mentioned

1 it -- is that these -- some of these projects are temporary
2 in their nature. Many of the building projects are temporary
3 in their nature. Many districts put up portables to house
4 kids on an interim basis in advance of opening a new school.
5 However, yes, a lot of portable projects are there for many,
6 many years because we have not been able to keep up with the
7 need to build schools in the State of California.

8 And I guess I would just say on the final point of
9 the inspection -- and I wasn't going to talk about this, but
10 you should be aware that the CASH organization fully supports
11 the Field Act standards for portable and modular buildings,
12 and we support in-plant inspection and on-site inspection for
13 all classrooms that are going to house kids.

14 There's no way we should be housing kids in
15 buildings that do not comply with the Field Act and do not
16 comply with law with respect to inspection.

17 So just from the standpoint of a practitioner and
18 the chair of a large organization that represents a lot of
19 school districts, there was a lot of moaning and groaning
20 that you probably heard in the room, and -- because a lot of
21 us use this as a very solid, legal, and legitimate way to
22 build schools in a timely fashion and to get buildings built,
23 to get kids housed, and within the limited dollars that we
24 have available.

25 So I would just ask as you move further into

1 discussion on this is to please work with us and don't throw
2 the baby out with the bath water here. Allow us to have this
3 as an option in our toolbox that we can use.

4 CHAIRPERSON OROPEZA: Assemblywoman Daucher.

5 ASSEMBLY MEMBER DAUCHER: I don't know that we
6 have time today, but I would like to learn more about the
7 in-plant, you know, inspection process and -- you said you
8 supported these inspections.

9 My question then is are they occurring and are
10 we -- are the kids protected with the inspections that we
11 have in place because we did hear some testimony that raises
12 a question. So I think a safety issue -- you know, I would
13 like a report on it.

14 I might say that -- you can hear arguments on both
15 sides. It sounds like this is an issue that we could debate
16 as to the merits of it. Any legislator is free to always
17 introduce a bill if they don't, you know, like the state of
18 the law, and put it through the legislative process and see
19 where it ends up and have the discussion through the
20 Legislature. And I think that might be the most appropriate
21 way, if someone feels strongly about this, to proceed.

22 I don't know that based on what we heard from
23 legal that we have the authority to go in and -- where the
24 area is gray and people are getting advice that this is a
25 perfectly legal, legitimate way, and we've heard, you know,

1 another contrary opinion. We've heard both sides, and, you
2 know, I think it's more of a legislative issue than one we
3 should try to legislate here.

4 CHAIRPERSON OROPEZA: Senator Margett and then
5 Mr. Sickler, as long as you guys don't fight.

6 SENATOR MARGETT: With regards to -- may we go
7 back to what you were talking about as far as the on-site
8 work, the sewer lines and the telephone lines and the
9 utilities and so on and forth. I'm assuming that was all
10 done with prevailing wage.

11 MR. HALL: Absolutely.

12 SENATOR MARGETT: You know, one of the things
13 that -- I don't know if everybody here is totally cognizant
14 of this, but we here at this Board allocate funds. We're not
15 an inspection authority. We're really not a union/nonunion,
16 try to differentiate sort of a thing either. That's really
17 kind of a local control sort of a thing.

18 I guess my question of you -- and, you know, I
19 don't want shoddy construction work. Never, ever in my
20 wildest dreams do I want it nor do you nor is there anybody
21 in this room that wants that.

22 I am concerned about the -- some of the testimony
23 that was given earlier. Do we have rampant problems with
24 regards to these modulars and they're not coming out of the
25 factory in a way that would not meet normal code that's

1 within a community, for instance, the welding, the
2 electrical. Any input on that?

3 MR. HALL: Senator, I've only installed one school
4 with modular, factory-built buildings, so I can speak from a
5 limited personal perspective. In answer to your questions,
6 we made sure we had the quality there that we needed to make
7 sure those buildings could house kids.

8 And as an organization, CASH is happy to work with
9 the staff. I think my message to you here is that I think
10 some of the pieces you're hearing today on this are really
11 the exception rather than the rule because piggyback bidding
12 is a widely used process throughout the State of California.

13 And so maybe you've got one or two incidents where
14 it's broken and it's not -- and it needs to be fixed, but I
15 don't think that means you have to throw that whole method
16 out.

17 I think we need to work together to figure out a
18 solution to those few exceptions.

19 SENATOR MARGETT: Um-hmm. Well, we want -- you
20 know, we want to get rid of the bad apples, but by the same
21 token, we have good policy and it's been working well. We
22 don't want to, to use your expression, throw the baby out
23 with the bath water.

24 CHAIRPERSON OROPEZA: Mr. Sickler.

25 MR. SICKLER: Yeah. You've heard the legal

1 opinion of the State Allocation Board legal staff. Why
2 should we believe your legal counsel over the State
3 Allocation Board legal staff?

4 MR. HALL: I would just remind you that the local
5 school board in terms of its practice of letting contracts
6 has the legal responsibility to make sure those contracts
7 meet with the letter of the law.

8 Whenever we have a public contract that involves
9 piggybacking, we have our legal counsel review that.

10 I've been very active in other school
11 organizations like the California Association of School
12 Business Officials who have had conferences and workshops on
13 this topic.

14 This not only involves -- and I don't want to open
15 up the aperture any further here -- but you should be aware
16 that this whole piggyback issue does not just involve school
17 buildings, but also involves lots of cooperative and joint
18 purchasing ventures for school equipment, materials, and
19 supplies where we are trying to do the best that we can at
20 the local level to get the biggest bang for the buck.

21 And so --

22 SENATOR MARGETT: Do you happen to know of any
23 labor unions that may do the same thing?

24 MR. SICKLER: Excuse me, Bob. We're about to get
25 into it again. I wasn't through. I got a follow-up

1 question.

2 MR. HALL: David, I don't know if I answered your
3 question, David.

4 MR. SICKLER: You got to go through the Chair.

5 SENATOR MARGETT: I'm being facetious. I was
6 being facetious and I -- he knew I was.

7 MR. SICKLER: I have another word for that.

8 No, but my question is why should we believe your
9 legal advice is better than the advice that we get from the
10 State Allocation Board legal department who knows the State
11 Education Code.

12 MR. HALL: Well, Mr. Sickler, I think we both have
13 to believe our own attorneys. I think with respect to
14 Mr. Ness and his work and his advice to you in terms of your
15 responsibilities -- you sit on this Board -- I think he's
16 been very clear that there's a certain amount of authority
17 you have over the designation and allocation of these funds.

18 But I think you also have to understand that the
19 school board has a certain amount of responsibility and needs
20 to get legal counsel on their documents as well.

21 So I don't think it's an either/or issue.

22 MR. SICKLER: I would agree with that. Thank you
23 very much.

24 MR. HALL: Thank you.

25 CHAIRPERSON OROPEZA: Okay. I'd like to kind of

1 wrap this issue up and move onto the rest of the agenda
2 because we're already running kind of late and -- so -- yeah.
3 Yes, sir.

4 MR. HENNING: I'd like to take a very quick moment
5 of your time because I don't want to beat this dead horse.

6 I represent a slightly different interest than has
7 spoken here previously. My name is Mike Henning. I'm the
8 Director of Governmental Affairs for Mobile Modular which is
9 the largest DSA leasing company in the state. So we're very
10 interested in rules and regulations that pertain to temporary
11 projects because that's what we do.

12 SENATOR MARGETT: Are you an attorney,
13 Mr. Henning?

14 MR. HENNING: I am not an attorney. Thank you,
15 sir.

16 In my previous life, I've been a manufacturer. I
17 was a manufacturer of DSA classroom that have been just
18 spoken of very disparagingly here today -- of Fresno. Two
19 companies for over 16 years.

20 I was the Chairman of the School Facilities
21 Manufacturers Association on three different occasions, so I
22 know a little bit about this business from our side of
23 things. And I would just like to clear up a couple of things
24 that I -- stuck in my craw a little bit.

25 One of them, Mr. Sickler, you just asked whether

1 local counsel -- legal counsel should be trusted rather than
2 the State Allocation Board counsel, and to be very honest
3 with you, in reading this report, I do not see anything in
4 there where the State Allocation Board counsel says it is
5 illegal.

6 He is just raising a question. That's how I
7 interpret the report. He's somewhat saying there might be an
8 issue here, but he hasn't said something wrong is being done.
9 He's just raising the issue that there might be.

10 You know, and I'm very unhappy with might bes.
11 You know, school districts and public agencies like to work
12 with a lot of certainty. You know, we don't need might bes.
13 We need to know is it right, is it wrong, is it legal, or is
14 it illegal.

15 You know, and it clearly has never proceeded to a
16 case situation, else-wise I'd be able to cite cases. So he's
17 not saying it's illegal. He's saying it might be. And the
18 county counsels in the various districts are using
19 piggybacks -- their county counsels -- personal legal
20 counsels for the school districts have a different opinion.
21 They're not saying it's gray or murky. They're saying it's
22 legal.

23 The other issue that I'd like to touch on very
24 quickly -- two issues. Number one is it is not competitively
25 bid.

1 Senator Margett asked how many manufacturers are
2 in this business and the number is fluid. There's about 12
3 right now in the state.

4 And the reason it's fluid is they keep going out
5 of business. It's so competitive.

6 When one of these bids comes up that has a
7 piggyback provision that will allow other school districts to
8 buy off of it, manufacturers are extremely aggressive in
9 trying to keep other manufacturers from getting that
10 piggyback as a tool.

11 They're -- they sharpen their knives. You know,
12 it's a very competitive business. To say that these things
13 are not competitively bid, well, I don't think that could be
14 further from the truth.

15 And if there's any monkey business -- if there's
16 any illegalities or any documents that weren't signed or
17 anything's missing, why the manufacturers are very adept at
18 challenging awards and righting those kinds of wrongs.

19 I just -- I wanted to make it clear that, you
20 know, it is very competitively bid -- very competitively bid.

21 The other thing that was touched on was the DSA
22 inspection, and Jackie Goldberg stated that the manufacturers
23 might be saving some money by cutting some corners on
24 inspections. The manufacturer does not and cannot pay for
25 the inspection.

1 The inspectors are hired by the school district.
2 Generally hired by their architect. It's completely outside
3 of the purview of the manufacturer. That would be the fox
4 watching the chicken coop if we hired the inspector.

5 The code requires that the buildings be
6 continuously inspected in the factory and on the site, and
7 the DSA inspectors which are hired by the school districts
8 are certified by the state, from a state list of DSA approved
9 inspectors, and the DSA field offices have overview. They
10 come out and check on the inspector's work, both at the
11 factory level and at the site level.

12 And I'm just -- we represent an industry that puts
13 a lot of school kids' fannies in buildings and we've done it
14 for a number of years and I'm very proud of our industry. We
15 wouldn't have been able to implement some state programs like
16 class size reduction or the response to the Northridge
17 earthquake without our industry.

18 So I just wanted to get those issues out.

19 CHAIRPERSON OROPEZA: Senator Margett.

20 SENATOR MARGETT: I guess -- you know, some of the
21 concerns that one of the other persons here that was at the
22 microphone -- and you no doubt heard him -- with regards to
23 welds that were not made correctly according to good working
24 standards, electrical, and so on and so forth.

25 I got to tell you -- is that prevalent within the

1 industry? I mean --

2 MR. HENNING: I would say it's just the opposite.
3 The nature of our product is we're in a manufacturing process
4 and we make boxes.

5 SENATOR MARGETT: Um-hmm.

6 MR. HENNING: We make the same thing again and
7 again and again. It's not a custom project. These are very
8 repetitive kinds of products, and --

9 SENATOR MARGETT: Kind of like an automobile
10 coming off an assembly line, huh.

11 MR. HENNING: It is an assembly line, and so the
12 people learn how to do the weld or the specific function that
13 they're trained to do and they do it again and again and
14 again.

15 That's not to say that we don't have new employees
16 or we don't have people that cut corners, but that happens in
17 all fields of endeavor.

18 SENATOR MARGETT: Yeah. We just can't let it get
19 into a classroom though. Modular -- if it happens.

20 MR. HENNING: Well, that's certainly not typical
21 at all.

22 SENATOR MARGETT: Um-hmm.

23 MR. HENNING: You know, that's the -- the
24 inspectors are working off of -- the DSA is -- they're
25 structural engineers by background.

1 SENATOR MARGETT: Right.

2 MR. HENNING: And so they're looking at the
3 important things. I mean they're looking at the welds,
4 looking at the integrity of the welds. They're very
5 concerned about connections. They're concerned about
6 fastening. They're concerned about nailing patterns.

7 SENATOR MARGETT: You ever had a lawsuit -- the
8 industry, I mean on these issues that I've just talked about?

9 MR. HENNING: No, sir. Not that I'm aware of.

10 SENATOR MARGETT: You ever been asked to be
11 unionized?

12 MR. HENNING: I ran a union plant for eight years.

13 SENATOR MARGETT: Is it prevalent?

14 MR. HENNING: No.

15 CHAIRPERSON OROPEZA: Thank you. Jackie, if we
16 can go back to the beginning of the agenda, please.

17 MS. WILSON: Okay. Well, the first item I'll
18 bring to your attention is under Tab 2, the minutes. I
19 request that the Board approve the minutes.

20 MR. SICKLER: So move.

21 MR. COOK: Second.

22 CHAIRPERSON OROPEZA: Without objection, we'll
23 deem those approved.

24 MS. WILSON: The next item is the Executive
25 Officer's statement. At the September 2004 State Allocation

1 Board meeting, the Clovis Unified School District requested
2 special consideration of the district's joint use project.
3 The SAB directed staff to work with the district and bring
4 the item back in 60 days.

5 Well, we're here at 60 days and we're not prepared
6 to present an item at this time. We are continuing to work
7 with the district and the Department of Education and
8 anticipate reporting to SAB at the January Board on the
9 Clovis joint use project.

10 The next is under Tab 5, status of funds. Under
11 Proposition 55 -- I'm actually on page 145 under the
12 apportionment section.

13 Proposition 55: funds available as of October 27
14 is \$7.5 billion and we're bringing to this Board on the
15 consent agenda 35.5 million, leaving a balance of
16 \$7.4 billion in the Proposition 55.

17 Under Proposition 47, we start with
18 \$736.4 million, and we're bringing to this Board on the
19 consent agenda \$104.6 million. Due to audits, closeouts, and
20 rescissions, we're -- monies -- \$17.7 million have come back
21 in, leaving a balance of \$649.5 million.

22 Under Proposition 1A, we start with \$4 million.
23 We're spending \$4 million at this Board, and a little bit of
24 money has also come back in, leaving a balance of \$400,000.

25 So the grand total amount of money available for

1 apportionment is \$8.1 million.

2 Turning to the next page --

3 SENATOR MARGETT: Billion -- 8.1 billion?

4 MS. WILSON: Billion. Excuse me. Billion
5 dollars.

6 Turning to the next page under fund release, under
7 Proposition 55, we've apportioned \$2.49 billion. We have
8 released \$302.4 million, leaving 2.1 yet to be released.

9 Under Proposition 45, we apportion \$10.6 billion.
10 We've released 8.3, leaving a balance of 2.2 to be released.

11 Under Proposition 1A, we apportion 6.6. We've
12 released 6.64, leaving a balance of 17.5 billion to be
13 released.

14 And as -- on page 147, here we have basically a
15 picture of what we have apportioned, what's available, and
16 what has been released. I won't discuss any further unless
17 you have questions.

18 On page 148, this is the old lease-purchase
19 program. We have available as of October 27th, \$6.1 million.
20 Due to closeouts, we have 2.1 available, leaving a -- giving
21 us a total amount to work with \$8.2 million.

22 If there are no questions, I will move on.

23 At this point, I'm going to turn the discussion
24 over to Bruce Hancock.

25 MR. HANCOCK: Thank you. The next item is Tab 10,

1 page 222 in the special calendar, and it concerns the
2 Glendale Unified School District.

3 The district is requesting reimbursement for
4 rehabilitation costs that were incurred at three school
5 sites. The funding -- the projects have been completed by
6 the school district and were to repair damage discovered that
7 apparently resulted -- was cumulative damage, but resulted
8 significantly from the Northridge earthquake.

9 The damage was discovered at the time that the
10 district was going to go ahead with modernization projects
11 funded by this Board.

12 The district did receive some limited funding from
13 the Federal Emergency Management Act, FEMA, and the Office of
14 Emergency Services, but that funding assisted them in getting
15 an analysis of the damage at the schools and with some of the
16 work that required the most immediate attention, but when
17 their assessment and planning was done for complete
18 rehabilitation, there was no longer any FEMA money available.

19 The Office of Public School Construction has
20 reviewed the projects and we believe that the projects are
21 eligible as rehabilitation projects.

22 What that means is that they are projects that had
23 damage so significant that the facilities were considered
24 health and safety hazards and therefore qualified under
25 our -- generally under our facility hardship program.

1 But because the work could be completed more
2 economically than total replacement of the facilities, we
3 moved them under this rehabilitation concept.

4 It is funded through the modernization program.
5 It is a 60-40 state and local split.

6 The amount of funding can be found on page 224
7 that the district is requesting reimbursement, and you can
8 see that the state's share is approximately six and a half
9 million dollars. The breakdowns of the total project costs
10 for the rehabilitation work and the state's share are shown
11 in the recommendations.

12 And we would recommend approval of the district's
13 request for this rehabilitation funding and for reimbursement
14 for work already completed at the schools.

15 CHAIRPERSON OROPEZA: Senator Margett.

16 SENATOR MARGETT: I guess the thing that jumps out
17 at me, Mr. Hancock, is that earthquake was what, 1993 or '4.
18 How come -- ten years later, what's the reason for such a
19 long delay in asking for reimbursement? Just not know where
20 the money was or did they --

21 MR. HANCOCK: I'm not sure I can answer that
22 entirely. I can tell you that the district did complete
23 their assessment in 1996. There was a bond passed in 1997 at
24 the district level that allowed them to go ahead and fund
25 this work, so they used money from that bond. It was

1 November of '97.

2 At that point, I can't tell you why the district
3 has only recently filed for reimbursement with us. I'm not
4 sure if there's a district representative here today. If
5 there is, perhaps they could answer.

6 MR. WHITE: There is.

7 MR. HANCOCK: Oh, good. Hi, Dick.

8 CHAIRPERSON OROPEZA: If you can come up and then
9 identify yourself, please.

10 MR. WHITE: My name is Richard White. I'm the
11 Administrator for Planning Development Facilities for the
12 Glendale School District.

13 Pertaining to your question on the process, we
14 were in the process of getting assistance that FEMA looked at
15 originally at all schools and determined that ten schools
16 needed to have a further in-depth review, which is what we
17 did.

18 At the completion of that review, we determined
19 that nine of the schools of the ten needed seismic
20 retrofitting because we were no longer in compliance with the
21 original design scope as directed by DSA.

22 Just about the time that we received that and were
23 about to go back to FEMA for the funding, there was a
24 hurricane in Florida and FEMA took the \$300 million that had
25 been allocated for these repairs and moved it to Florida,

1 leaving the district in a position of not having the
2 available funding to make the necessary repairs.

3 We then were in the process of going for a bond.
4 We passed the bond in '97, and then went into the process of
5 doing design and working with the State Allocation Board
6 through OPSC to get the necessary funding.

7 It took us about three years to get the necessary
8 design work that we had to do. One of the school's total is
9 very extensive. If you notice it's almost \$10 million in
10 retrofitting that we have to do just for seismic on a
11 \$26 million project. That is very extensive and took a lot
12 of design time.

13 We awarded the contracts in sequence. We went
14 from one school then the other school then the other school
15 so that we didn't have all the schools at one time in the
16 interim housing situation. We just don't have the allocation
17 of land to do that.

18 I have been working with the Office of Public
19 School Construction for probably the last two and a half
20 years to move through this process to get to today, and the
21 reason it's taken that long is that we originally had two
22 other projects approved by the State Allocation Board for
23 this, and I'll go back to those.

24 One was the Clark Magnet High School that we did
25 in '98, and it's not listed here because we've already been

1 funded through the State Allocation Board for that hardship
2 on that school, and that was about \$700,000.

3 We also were approved -- and that under the LLP
4 program.

5 We were also approved for Crescenta Valley High
6 School, and that was done in '99 for approximately \$800,000
7 under the SFP program. So we were moving through the
8 process.

9 The problem was that those approvals were a little
10 easier to get than this one. In this one, we had to work
11 with Division of State Architect and show a life safety need
12 because the rules have changed in the interim period, and we
13 have worked with OPSC and DSA to do the -- and that's where
14 we are today.

15 We have received that direction from DSA that we
16 had a life safety issue. We need to move the students out of
17 it, and we have done that and modernization the buildings
18 there in the process of fixing it up at this point in time.

19 I'll be glad to take any questions you may have at
20 this point.

21 CHAIRPERSON OROPEZA: Yes.

22 SENATOR MARGETT: Just as a sidebar. As a kid, I
23 attended Toll Junior High School.

24 MR. WHITE: Well, you would be surprised what it
25 looks like.

1 SENATOR MARGETT: Hate to tell you what year
2 because you'd do the math, but nevertheless the beauty of
3 that school, I guess it's still a brick façade on the front
4 or is that --

5 MR. WHITE: We have --

6 SENATOR MARGETT: -- what you lost during the
7 earthquake?

8 MR. WHITE: No. We have kept the outside
9 exterior, but you would be surprised if you walked through it
10 during the seismic retrofitting, we literally gutted the
11 inside of the building from the basement to the roof because
12 we had to put in three-foot seismic walls from the basement
13 up to the roof and then rebuild all the floors and rebuild
14 the whole room.

15 Plus I had to put six 65-foot caissons in as part
16 of the requirement for the structural retrofit. So when you
17 come back -- we would welcome you back -- you'll see a
18 different school.

19 SENATOR MARGETT: Fine. Good.

20 CHAIRPERSON OROPEZA: Mr. Sickler.

21 MR. SICKLER: Yeah. Well, I went through that
22 Northridge earthquake and I know that it takes sometimes
23 several years before all of the failures structurally are
24 found out, so I'm not surprised it took a while.

25 CHAIRPERSON OROPEZA: And the projects are done?

1 MR. WHITE: Two of the projects have been
2 completed. The third one at this point in time, we did it in
3 phases. So the students are back in that half of the
4 building which has been retrofitted. The rest of the
5 students are currently in interim housing at this point in
6 time and the project is expected to be completed in April.

7 CHAIRPERSON OROPEZA: Okay.

8 MR. WHITE: 2005.

9 SENATOR MARGETT: But those are the only three
10 schools in the school system that really suffered damage in
11 that --

12 MR. WHITE: We had ten --

13 SENATOR MARGETT: -- '94 quake?

14 MR. WHITE: -- total that we looked at. Nine we
15 determined needed to have the retrofitting. Probably six of
16 those were fairly major in that they exceeded a couple
17 hundred thousand dollars.

18 Remember, it's a 60-40. So when I say we received
19 800,000, that's about a million two for that retrofitting and
20 so forth for that process.

21 Where those were less in the 2- or 300,000, the
22 district made those as part of its modernization project and
23 did not go back to the state for that allocation.

24 SENATOR MARGETT: Then Hoover High right across
25 the street, I guess -- of course that was built a few years

1 ago to the earthquake standards, so you lucked out on that I
2 guess, huh?

3 MR. WHITE: Hoover came out fine.

4 CHAIRPERSON OROPEZA: Do I have a motion?

5 SENATOR MARGETT: Move it.

6 MR. COOK: Second.

7 CHAIRPERSON OROPEZA: I have a first and a second.
8 Without objection, we'll approve that.

9 MR. HANCOCK: Thank you, Madam Chair. The next
10 item is Tab 11, page 228, and concerns Jurupa Unified School
11 District.

12 If the Board will recall, the district filed a
13 joint use project for a facility on a site that was adjacent
14 to an existing school site. The staff rejected the
15 application because the district did not own the adjacent
16 site at the time the application was filed nor at the time
17 the application was brought before the Board.

18 However, the Board in hearing the district's
19 appeal on that item agreed to give the district until this
20 Board meeting to acquire the site at which time if they did
21 so the Board would consider their application for joint use
22 funding.

23 The district has provided evidence that they now
24 own the site adjacent and we are commending approval of the
25 district's joint use funding as you will find on page 229, a

1 breakdown of the amounts.

2 CHAIRPERSON OROPEZA: Any questions?

3 MR. SICKLER: I make a motion we approve.

4 MR. COOK: Second.

5 CHAIRPERSON OROPEZA: Second. Without objection,
6 we'll deem that approved.

7 MR. HANCOCK: Thank you. The next item is behind
8 the Regulations section and behind Tab 12 and is on page 230.

9 A little bit of explanation since this is somewhat
10 unusual.

11 This regulation was approved by the Allocation
12 Board in March of this year. So what is presented on
13 Attachment B, page 231, is precisely the same regulation that
14 the Board reviewed before. I would be glad to explain that
15 regulation to you if you have any questions, but it's
16 essentially about how districts go about filing in this
17 program for multi-story replacement facilities on existing
18 school sites.

19 The reason that it's back is that the process --
20 the administrative law process after the Board's approval
21 requires us to among other things have a 45-day public
22 comment period.

23 During that time, we did receive a public comment
24 which you can find characterized on page 230a. Actually
25 there were two comments, but they were from the same source.

1 Because we received a comment, we must address
2 them and we must make a finding on them in terms of their
3 relevancy.

4 The staff did find that the comments did not
5 warrant revisions to the proposed amendments. We are
6 bringing that to you and then we are asking as required by
7 administrative law to approve the final adoption of the
8 regulations.

9 The comments -- very, very, very briefly, you can
10 see them behind 1 and 2 on page 230a.

11 The law had specifically removed one of the
12 criteria for participating in this mini program, if you will,
13 of multi-story replacement facilities. One -- the
14 multi-track year-round criteria had previously been required.
15 The law specifically deleted it.

16 The gentleman making the comments suggested that
17 we put it into regulation in any event. Clearly because the
18 law made specifically was to eliminate the MTYRE, that could
19 not be possible. And secondly, the gentleman suggested that
20 there be allowed in some cases demolition of parts of entire
21 single-story existing buildings instead of portions.

22 We anticipate that can occur and there is nothing
23 in the regulations that prevents it. So there was nothing
24 required to clarify or to make that possible. It is
25 possible.

1 So with that, we would simply ask that you
2 determine that the public comments did not warrant revision
3 and make a final adoption of the regulations.

4 CHAIRPERSON OROPEZA: Do you have -- oh, I'm
5 sorry. Senator Margett.

6 SENATOR MARGETT: Just one question again, Bruce.
7 With regards to the comments that you just made, in other
8 words, as we partner with these school districts to do
9 reconstruction, all of a sudden, if we -- the state --
10 decides that maybe only half of the school needs to be torn
11 down, but the school district says okay, we're going to go
12 the full -- tear down the entire school, are we as a state
13 entity on the hook for just half of the school or are do our
14 bonds take care of -- because the school district decides
15 they're going to do the entire demolition and a brand-new
16 school, how does that work?

17 MR. HANCOCK: There's nothing that would require
18 this Board to be a partner in the school district's decision.
19 This Board is only required or only allowed to fund eligible
20 projects.

21 So that -- to the degree that only a portion of
22 the school was eligible, then the Board could actually only
23 provide funding for that. It wouldn't be left up to the
24 district's wishes.

25 As you point out though, the district could

1 proceed with other projects with their own funding, but that
2 would not have state participation.

3 SENATOR MARGETT: Could they use -- I'm -- this
4 may be out of -- just for my own information. Could they use
5 bond funds that were raised out of their district themselves
6 or are those bond funds usually written that there are going
7 to be matching funds on a 50-50 basis.

8 MR. HANCOCK: It can be both, and it would
9 entirely depend on how the district constructed their bond
10 proposal before the voters, but I have seen bond proposals
11 where there was a proposal to replace or significantly
12 upgrade particular schools entirely with local funding.

13 CHAIRPERSON OROPEZA: I'm sorry. Mr. Cook.

14 MR. COOK: I'm just going to move.

15 CHAIRPERSON OROPEZA: Okay.

16 MR. COOK: I move the recommendations.

17 ASSEMBLY MEMBER DAUCHER: Second.

18 CHAIRPERSON OROPEZA: Without objection, we'll
19 deem those approved.

20 MR. HANCOCK: Thank you. That takes us --

21 CHAIRPERSON OROPEZA: If any of the members
22 have -- yes.

23 ASSEMBLY MEMBER DAUCHER: I have one more thing.

24 CHAIRPERSON OROPEZA: Sure.

25 ASSEMBLY MEMBER DAUCHER: We had received a

1 letter -- and I know it's not agendized, so I would ask for a
2 little report -- mini report next time -- on a school
3 district that bid out a project and, reading between the
4 lines, it looks to me like the bid was so high that they felt
5 they had to cut the library and cut the multipurpose room,
6 and all they were left with was classrooms.

7 Could -- I'd like to have -- I'd like to know how
8 widespread this is and kind of the statewide implications of
9 this. If we're going to see a lot of these or if districts
10 are having this kind of problem, it might be something we're
11 going to have to talk about -- at the next meeting.

12 CHAIRPERSON OROPEZA: Senator Margett.

13 SENATOR MARGETT: You know, Ms. Daucher is
14 absolutely right. And, you know, in conjunction with that,
15 if we could sidebar on that, you know, the acquisition of a
16 school site, do we have parameters by the state? I mean some
17 of these school sites that are acquired range in the
18 multi-millions of dollars. I mean there's lots of ham
19 sandwiches spent there.

20 And, you know, I'm astounded at some of the costs
21 that go into the acquisition of some of these school sites.
22 Of course, the oversight on that -- is there kind of a gray
23 area here or is it pretty well defined by policy?

24 MR. HANCOCK: Well, I will -- Senator, the State
25 Department of Education, that is one of the primary

1 responsibilities of the school facilities planning division
2 within the State Department of Education, and they do in fact
3 have criteria for the selection of school sites and that is I
4 think a keystone to their entire process.

5 All school sites that are funded by this Board --
6 I think it's correct to say -- must go through that process
7 and receive that approval.

8 But I'm not the right one to address what those
9 criteria are. That would be I think representatives of the
10 school facilities planning division.

11 CHAIRPERSON OROPEZA: So maybe we can --
12 Mr. Ellerbee, if you can direct your staff to bring back a
13 report on the criteria next month.

14 DR. ELLERBEE: Sure.

15 SENATOR MARGETT: That would be good. I mean and
16 I guess costs. I mean just inordinate the amount of money
17 that's spent on some of these school sites. And I know that,
18 you know, land is precious in some areas, but still --

19 MR. HANCOCK: Thank you, Senator. Assembly Member
20 Daucher, on your issue, you asked for us to look into how
21 widespread this is. First of all, there is a likely appeal
22 that will come to the Board in January on this issue.

23 The issue of how widespread it is though may well
24 be something that is quite an undertaking. We certainly
25 would ask for help from the school district representatives.

1 I'm thinking of CASH of course, but there may be others.
2 Maybe county offices can help. We would ask for all the help
3 we can, but it could be a big undertaking because we do not
4 collect data on the cost of projects across the state, how
5 many have exceeded their budgets, how many have had to remove
6 facilities to make a budget work.

7 ASSEMBLY MEMBER DAUCHER: Well, I mean I was on a
8 board. We built a high school and we did have to value
9 engineer which is a --

10 MR. HANCOCK: Yes.

11 ASSEMBLY MEMBER DAUCHER: -- term we're all
12 familiar with. But, you know, if you have to value engineer
13 so you have nothing but classrooms, that's certainly an
14 issue.

15 I don't know. Maybe CASH and others can help you
16 ascertain facts and data if there --

17 CHAIRPERSON OROPEZA: And I think the issue goes
18 beyond K-12. I know CSU has had problems with their bidding
19 and have had to not proceed with projects. So they do have
20 limitations as well. 20 percent over -- and if they exceed
21 that, they withdraw their projects, and they've been having
22 the same problem.

23 MR. HANCOCK: We did -- also just to refresh your
24 memory, we did a number of months ago, probably about the
25 middle of the year, we brought a report on the bid climate

1 issue -- the high big climate issue, and we tried to address
2 some of the issues, but quite frankly the tools at hand for
3 this Board or the Office of Public School Construction are
4 pretty limited as to how to address something like that.

5 But I don't believe that we had in there, for
6 instance, a survey like you're asking, how many have fallen
7 in there. We just knew from correspondence from districts
8 and others that it was a matter of concern and probably was
9 in many parts of the state, but we didn't have anything very
10 prescriptive.

11 ASSEMBLY MEMBER DAUCHER: I guess I'd also like to
12 know if a district does get caught in this and it's a -- you
13 know, everybody finds out it's legitimate and they've value
14 engineered, but -- you know, you've done what's reasonable
15 and comparable to what other districts are doing, I'd like to
16 know what the possible remedies might be.

17 CHAIRPERSON OROPEZA: And I think we need to hold
18 off, then have that discussion at a meeting when it's
19 agendized.

20 ASSEMBLY MEMBER DAUCHER: Yeah. I --

21 CHAIRPERSON OROPEZA: It's probably not an
22 appropriate discussion at this point.

23 ASSEMBLY MEMBER DAUCHER: If you'd flush it all
24 out and lay it all out for us.

25 CHAIRPERSON OROPEZA: Right.

1 MR. DUFFY: I just want to let you know we did a
2 survey in May and June on this very topic, and I can share
3 that information with Mr. Hancock so he can share it with
4 you.

5 CHAIRPERSON OROPEZA: Thank you.

6 MR. HANCOCK: But -- I'm sorry. I just would like
7 to ask, however, that in order to put together a report like
8 that, it may require more than 30 days. We will be coming
9 back with the individual district appeal probably right away,
10 and it will have some components of that.

11 ASSEMBLY MEMBER DAUCHER: Um-hmm.

12 MR. HANCOCK: But as to the overall policy, it may
13 take more than 30 days, with your permission.

14 CHAIRPERSON OROPEZA: Sure.

15 MR. HANCOCK: Thank you.

16 CHAIRPERSON OROPEZA: Unless we have any other
17 questions, then we'll adjourn the meeting.

18 SENATOR MARGETT: Just one.

19 CHAIRPERSON OROPEZA: Oh, I'm sorry. One more.

20 SENATOR MARGETT: Yeah.

21 CHAIRPERSON OROPEZA: Senator Margett.

22 SENATOR MARGETT: Yeah, just one question. I have
23 a question to ask Mr. Sickler here.

24 May I have your home address. I'd like to send
25 you a Christmas card.

1 ASSEMBLY MEMBER DAUCHER: I thought it was going
2 to be a Christmas cookie.

3 MR. SICKLER: I'll be happy to give it to you, but
4 I'm going to refer it to Homeland Security.

5 (Whereupon, at 3:54 p.m. the public meeting was
6 concluded.)

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REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

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